

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

LAMONT B. SIMMONS,
MELISSA R. SIMMONS,
On behalf of themselves and all
Others similarly situated,

Plaintiffs,

vs.

ROUNDUP FUNDING, LLC,
MALEN & Associates, P.C.

Defendants.

CASE NO. 08-6263 RWS

AFFIDAVIT OF PAUL W. MAHLER IN SUPPORT OF FEES AND COSTS

I, Paul W. Mahler, being first duly sworn, upon oath deposes and says as follows:

1. I am the attorney for Malen & Associates, p.c. ("Malen") and have personal knowledge of the facts in this case and the underlying bankruptcy case. I am admitted in the State of New York and all the federal district courts in the State of New York and have been an attorney since January, 1997. I am over the age of eighteen and am competent to testify to the matters set forth herein. My testimony is based upon my own personal knowledge.
2. Upon review of the Court's Opinion entered on September 23, 2009 , opposing counsel's motion for reconsideration, and upon conferring with counsel for Roundup Funding, LLC ("Roundup"), all parties are unclear whether the Court granted both attorney's fees and costs against Plaintiff or simply awarded costs under 15 U.S.C. § 1692k of the Fair Debt Collection Practices Act ("FDCPA"). Due to this confusion and to avoid redundancy, I have itemized both the fees and costs for the Court to decide.
3. On July 10, 2008, Plaintiff filed a class action complaint against Roundup and Malen ("Defendants"), alleging violation of the FDCPA for failure to attach documentation to the bankruptcy proof of claim and inflating the bankruptcy proof of claim amount.
4. My hourly rate is \$200.00. I have been practicing as an attorney in the field of Creditor's Rights for over nine years. I represent creditors in various venues including the State Courts of New York, Federal Bankruptcy Courts, and Federal District

Courts. My rate of \$200.00 per hour is appropriate in light of my experience in the field as well as comparable rates of attorneys within the New York City area.

5. Although I am employed by Malen, Malen lost my time in order for me to defend against this frivolous case. Described below are my hours and associated costs to defend against the FDCPA claims is \$4,740.00. As of November 2, 2009, Malen incurred costs associated with defending against the FDCPA claims in the amount of \$47.81. The following is an itemization of my time spent on this matter and costs incurred:

Date(s)	Hours	Amount	Description of Services
7/18/08	1.0	\$200.00	Review Complaint, Draft Warning Letter to Plaintiffs' Counsel.
7/22/08	.75	\$150.00	Review letter from Plaintiffs' Counsel, Review Amended Complaint, Draft Second Letter to Defendants' Counsel.
7/23/08	1.0	\$200.00	Review Letter from Plaintiffs' Counsel. Research cases supporting position that no FDCPA claim may be brought based upon a Proof of Claim. Drafted third warning letter to Plaintiffs' Counsel.
8/20/08	2.2	\$440.00	Research for Motion to Dismiss. FDCPA Claims on a Proof of Claim, Immunity Doctrine, Bankruptcy Court Jurisdiction, and Attorney fees.
8/21/08	2.0	\$400.00	Draft Motion to Dismiss.
8/25/08 – 8/26/08	2.1	\$420.00	Continue Drafting Motion to Dismiss, Review Motion, Prepare Affidavits, Serve and File Motion to Dismiss.
9/02/08	0.1	\$20.00	Review Court's Scheduling Order.
9/10/08 – 9/11/08	.75	\$150.00	Prepare motion for admission of Linh K. Tran Pro Hac Vice. Serve and File Motion.
9/18/08	.75	\$150.00	Review Plaintiffs Opposition to Malen's Motion to Dismiss.
9/19/08	0.1	\$20.00	Review Order granting admission Pro Hac Vice.

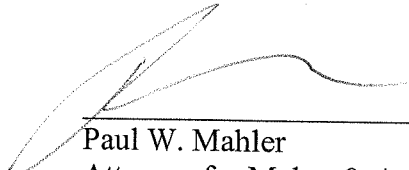
Date(s)	Hours	Amount	Description of Services
9/19/08	2.20	\$440.00	Research Case Citations from Plaintiffs' Opposition to Malen's Motion; Review a sampling from the PACER list in Plaintiffs' motion; Draft Reply.
9/22/08	1.2	\$240.00	Final Review of Reply, Serve and File.
9/20/08-9/25/08	0.5	\$100.00	Communications with Roundup's Counsel
9/25/08	0.6	\$120.00	Review Roundup's Answer and Motion to Dismiss.
10/08/08	0.3	\$60.00	Review Motion to Certify Class
10/20/08	.60	\$120.00	Review Plaintiffs' Opposition to Roundup's Motion to Dismiss.
10/21/08-10/22/08	0.3	\$60.00	Review Judge's rules, Discuss with Roundup's counsel. Draft Affidavit.
11/4/08	0.2	\$40.00	File Affidavit.
11/05/08	0.1	\$20.00	Review Scheduling Order
11/18/08	0.3	\$60.00	Review Plaintiffs' Reply to Roundup's Motion to Dismiss.
1/7/09	0.1	\$20.00	Communications with Roundups' Counsel
1/8/09	0.2	\$40.00	Draft and file Letter Requesting Adjournment
1/9/09	0.1	\$20.00	Review Endorsed Letter
4/14/09	0.1	\$20.00	Review Withdrawal of Counsel
9/23/09	0.7	\$140.00	Review Court's Opinion
9/30/09	1.5	\$300.00	Review Plaintiffs' Motion for Reconsideration; Research Rule 11 Motion
10/1/09	1.3	\$260.00	Draft and serve Rule 11 Motion ¹ upon Plaintiffs' Counsel
10/2/09	1.75	\$350.00	Draft Opposition to Motion for Reconsideration
10/5/09	0.5	\$100.00	Review and file Opposition to Plaintiffs' Motion for Reconsideration; Communication Roundup's Counsel.

¹ On October 1, 2009, Malen, pursuant to Rule 11, served a Motion for Sanctions upon Plaintiffs' counsel for their refusal to dismiss the frivolous complaint, and frivolous continuation of the matter by filing a motion for reconsideration. Unfortunately, the denial of Plaintiffs' motion was issued by the Court just shy of the 21 day safe harbor requirement and Malen was not able to file it's motion with the Court. It is respectfully requested this Court have Plaintiffs' Counsel Show Cause under Rule 11(c)(3) why they should not be sanctioned.

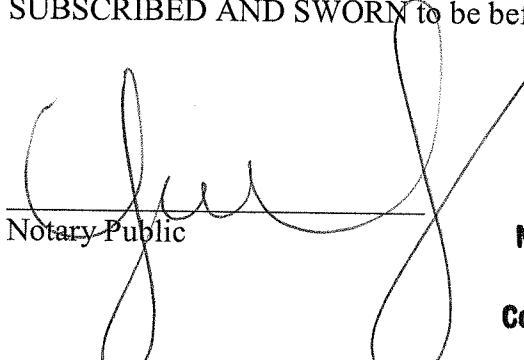
10/7/09	0.2	\$40.00	Review Roundup's Opposition
10/14/09	0.1	\$20.00	Review letter received from Plaintiffs' counsel
10/15/09	0.1	\$20.00	Review Court's Endorsement denying Motion for Reconsideration.
TOTAL ATTORNEY'S FEES	23.70	\$4,740.00	

Date(s)	Costs	Description of Costs
8/26/08	\$8.25	Postage for Motion to Dismiss
8/26/08	\$26.80	Copy costs (67 pages at .10 per page 4 copies) for Motion to Dismiss
10/1/09	\$3.80	Copy costs (19 pages at .10 per page 2 copies) for Motion for Sanctions
10/1/09	\$2.78	Postage for Motion for Sanctions
10/5/09	\$3.40	Copy Costs (17 pages at .10 per page 2 copies) for Opposition to Plaintiffs' Motion for Reconsideration
10/5/09	\$2.78	Postage for Opposition to Plaintiffs' Motion for Reconsideration
TOTAL COSTS	\$47.81	

Dated this 9th day of November, 2009


Paul W. Mahler
Attorney for Malen & Associates, p.c.
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Westbury, NY 11590
Phone: (516) 479-5951
Fax: (206) 239-1958

SUBSCRIBED AND SWORN to be before this 9th day of November, 2009.


Notary Public

JESSICA M. PATANE
Notary Public-State of New York
No. 01PA6208259
Qualified In Nassau County
Commission Expires June 29, 2013